

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3765 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PAER RANAJI MANSANGJI

Versus

DECEASED KARUBHA MOKAJI

Appearance:

MR YS MANKAD for Petitioners
NOTICE SERVED BY DS for Respondent No. 1
MR AR THACKER for Respondent No. 3
DELETED for Respondent No. 7
M/S PURNANAND & CO for Respondent No. 19

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/10/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. Y.S. Mankad appearing

for the petitioners and learned Senior Counsel Mr. J.R. Nanavati for learned counsel Mr. A.R.Thakkar appearing for Respondent No.3.

2. This petition is preferred by the petitioners under Article 227 of the Constitution of India praying that impugned judgments and awards passed by both the authorities viz. (i) Award dated 20.5.1980 passed by learned Spl. Mamlatdar, Nakhatrana in Inam Case No. Nil under the provisions of the Bombay Inams (Kutch Area) Abolition Act, 1958 and, (ii) Oral Judgment dated 10.10.1985 passed by the Gujarat Revenue Tribunal in Appeal No.TEN.A.K. 41/1980, be quashed and set aside. By way of interim relief, the petitioners have also prayed for issuance of appropriate directions restraining respondent no.19 from making payment of compensation amount awarded to respondent nos. 1 to 18.

3. The brief facts leading to the present petition are as under:-

That the petitioners and respondent nos. 1 to 18 are the Inamdars- Mulgarasia of village Danana, Ta: Nakhatrana. The Original ancestor of both the parties was Shivrajji who had two sons Panchaji and Pabaji. The petitioners represent Pabaji's Branch whereas respondent nos. 1 to 18 are representing Panchaji's Branch. For the sake of convenience, they will be referred accordingly. The village Danana belongs to the members of both the Branches. On coming into operation the Bombay Inams (Kutch Area) Abolition Act, 1958 (hereinafter referred to as the "Act"), respondent nos. 1 to 18 filed an application claiming compensation for the Jagir that was abolished under sec.15 of the said Act, before the learned Spl.Mamlatdar, Nakhatrana, claiming that they are the only persons entitled for compensation. When petitioners came to know about the same, they also filed the claim petition. However, without considering the claim put forward by the petitioners, learned Spl.Mamlatdar, Nakhatrana, vide award dated 20.5.1980, awarded compensation of Rs.38,892-81 to respondent nos. 1 to 18 and dismissed the claim put forward by the petitioners for compensation. Being aggrieved by the said award, the petitioners have preferred Appeal before the Gujarat Revenue Tribunal, which also came to be dismissed vide oral judgment dated 10.10.1985. Hence, the present petition.

4. Learned counsel appearing for the petitioners viz. Pabaji's Branch, has taken me through both the

impugned orders under challenge and has submitted that both the authorities have committed grave and serious error in not interpreting copies of the original documents available on record in proper spirit and perspective, though genuineness of those documents were never disputed by both the authorities. It is the case of the petitioners that learned Spl. Mamlatdar should have divided amount of compensation equally amongst both the Branches viz. Pabaji's Branch and Panchaji's Branch. The learned Spl. Mamlatdar has committed an error in awarding entire amount to respondent nos. 1 to 18 i.e. Panchaji's Branch ignoring the claim put forward by Pabaji's Branch supported by documentary evidence as well as ignoring the submissions made by the learned counsel appearing for Pabaji's Branch.

5. Initially, dispute was also raised as to the quantum of compensation awarded by learned Spl. Mamlatdar, but today when matter was heard, none of the parties have pressed the quantum of compensation. It has been mainly argued by the learned counsel appearing for the petitioners that learned Spl. Mamlatdar ought to have considered the documents which were available on page 95 of the record. I have gone through the award passed by learned Spl. Mamlatdar as well as the oral judgment delivered by the Gujarat Revenue Tribunal (hereinafter referred to as the "Tribunal"). Learned Member of the Tribunal has discussed the relevant part of submissions in paras-4 & 5 of the judgment and has concluded that the interpretation put forward by the petitioners (appellants) was not acceptable to the Tribunal. Mortgage deed was also brought to the notice of the Tribunal. The said document of mortgage and document of sale are said to have been executed in the S.Y.1881 & 1882. Considering these documents, Ld. Spl. Mamlatdar ought to have concluded that both the Branches were entitled to the amount of compensation payable under the relevant provisions of the Act. This matter was heard on more than one occasions as the same was assigned specially to this Court and in response to the queries raised by the Court, learned counsel appearing for the petitioners today has produced typed copies of the documents which are relevant for the purpose of dispute between the parties. Said copies are also given to the learned counsel Mr. Nanavati for the respondents. Both the counsels have taken me through the documents and language used therein. Both the documents are crucial and are throwing light on the rights of the parties qua the lands of village as Inamdar. It is not a matter of dispute that there was litigation pending in the Court of State of Kutch prior to Independence. It seems that both

these authorities have not considered these documents in true letters and spirit. I am satisfied that the petitioners have never forsaken their rights or interest on the land and they had a right to enjoy Inam land, of course with certain restrictions. It was open and obligatory for the learned Spl.Mamlatdar and/or Tribunal to apportion the shares of both the Branches claiming their respective shares in the amount of compensation.

6. I have gone through both the orders passed by the authorities below and the typed copies of the relevant documents produced before me. I am satisfied that both the authorities have not properly considered vital documents and appreciated them in true and proper perspective and hence both the impugned orders require to be quashed and set aside and this matter is required to be remanded to the learned Mamlatdar concerned for apportionment of shares of both the Branches and for awarding amount of compensation as per the share of the party concerned as determined. However, learned counsel Mr. Nanavati appearing for Panchaji's Branch has fairly submitted that without going into the meticulous exercise and throwing the parties again to protracted litigation for several years, some amount at this stage can be directed to be paid to the petitioners representing Pabaji's Branch towards their share as Inamdars. I am told that amount of compensation so awarded by the learned Spl. Mamlatdar is still lying with the Government Treasury and respondent nos. 1 to 18 are not paid anything because of pendency of the proceedings, initially before the Tribunal and thereafter before this Court. Consensus has been arrived at the parties that amount of Rs. 5000/ (Rs. Five thousand only) be paid to the petitioners representing Pabaji's Branch towards their share as Inamdars. Learned counsel Mr. Mankad appearing for the petitioners agrees that the petitioners would be satisfied if they are paid an amount of Rs.5000/ (Rs. five thousand only) as their share in total amount of compensation. Under the circumstances, I do not see any need of further discussion in the matter and, instead of quashing and setting aside both the orders passed by both the authorities and remanding the matter to learned Spl.Mamlatdar concerned for determination of share afresh in accordance with law, I pass the following order modifying the both the orders passed by both the authorities.

7. For the reasons aforesaid, petition is partly allowed. It is hereby directed that the out of total amount of compensation lying in the Government Treasury, the petitioners representing Pabaji's Branch shall be

paid an amount of Rs.5000/- (Rs. five thousand only) towards their share in Inam and rest of the amount be paid to the respondent nos. 1 to 18 representing Panchaji's Branch. Both the impugned orders passed by both the authorities viz. learned Spl. Mamlatdar, Nakhatrana & Gujarat Revenue Tribunal, Ahmedabad, are modified to the aforesaid extent. Directions accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

19.10.2000 [C.K. BUCH, J]

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